TABLE OF CONTENTS

	PAGE
STATEMENT OF THE CASE	2
REASONS FOR DENYING THE WRIT	4
I. THIS CASE IS MOOT SINCE THE PETITIONER WAS RELEASED FROM CIVIL CONFINEMENT ON OCTOBER 24, 1972	3
II. CASE AUTHORITY CLEARLY DICTATES THAT PETITIONER SHOULD BE COMPELLED TO TESTIFY BEFORE THE GRAND JURY	5
CONCLUSION	7

CASES CITED

BERRY v. DAVIS, 242 U.S. 468 (1917)	4
BRANZBURG v. HAYES, 408 U.S. 665 (1972)	5,6
BRYAN v. AUSTIN, 354 U.S. 933 (1957)	4
PRESENTMENT BY CAMDEN COUNTY GRAND JURY, In re, 34 N.J. 378, 169 A. 2d 465 (1971)	4
STATE v. STONE, 429 F. 2d 130, 140 (CA 2, 1970)	6
WILLIAMS v. SIMONS, 355 U.S. 49 (1957)	3

STATUTE CITED

N.J.S. 2A: 84A-21	2,4

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-923

PETER BRIDGE,
Petitioner,

-vs-

STATE OF NEW JERSEY,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

JOSEPH P. LORDI
ESSEX COUNTY PROSECUTOR
ESSEX COUNTY COURTS BUILDING
NEWARK, NEW JERSEY 07102

R. BENJAMIN COHEN
ASSISTANT PROSECUTOR
Of Counsel

DONALD KESSLER
LEGAL ASSISTANT
On the Brief

STATEMENT OF THE CASE

Petitioner seeks a writ of certiorari to review a judgment entered in the Appellate Division of the Superior Court of New Jersey on September 12, 1972, affirming an order of the Superior Court, Law Division, holding petitioner in civil contempt for refusing to answer five questions before the Essex County Grand Jury and confining him to the County Jail until he answered the questions or until the Grand Jury was discharged. On September 26, 1972, the Supreme Court of New Jersey denied certification. On September 27, 1972, Mr. Justice Brennan denied an application for stay. This application was then referred to Mr. Justice Douglas who, in turn, referred it to this entire Court. On October 3, 1972, this Court denied the stay application. (Mr. Justice Douglas cast his vote for the stay.) Petitioner was released from jail on October 24, 1972, when the Grand Jury was discharged.

On May 2, 1972, petitioner, a newspaper reporter for the now defunct Newark Evening News, wrote an article in that paper in which he quoted Mrs. Pearl Beatty, a Commissioner of the Newark Housing Authority, as saying that, "A man walked into her office and offered her $10,000 to vote for "their choice for executive director.' " Mrs. Beatty was also reported to have said that at least two other Newark Housing Authority Commissioners had been harassed and threatened.

A grand jury investigation of this matter was commenced and petitioner received a subpoena requiring him to testify. On May 23, 1972, petitioner moved to quash the grand jury subpoena on the grounds that his First Amendment rights were violated and that he was protected by the newspaperman's privilege embodied in New Jersey statute N.J.S. 2A:84A-21. On May 31, 1972, the Honorable James Giuliano, J.S.C., denied petitioner's motion to quash the subpoena and on June 1, 1972, Judge Giuliano signed an order requiring petitioner to appear before the grand jury on June 6, 1972. On June 6, 1972, an interlocutory appeal was heard by the Appellate Division of the Superior Court of New Jersey, and the denial of the motion to quash the subpoena was affirmed.

Petitioner appeared before the grand jury on June 8, 1972. He admitted that Mrs. Beatty had made the statements to him which were quoted in the article. However, he refused to answer certain questions which were designed to explore the information he received from Mrs. Beatty, and which may have formed the basis

for indictments in this matter. Petitioner was brought before Judge Giuliano, and after a hearing, petitioner was directed by the court to answer the questions. Petitioner again appeared before the grand jury on June 14, 1972, and refused to answer the questions. Judge Giuliano again ordered the petitioner to answer the questions. When petitioner persisted in his refusal to answer the questions, Judge Giuliano ordered petitioner to show cause why he should not be held in contempt. A hearing on this order to show cause was held before the Honorable H. Curtis Meanor, on July 6, 1972. On July 7, 1972, Judge Meanor entered an order adjudging petitioner in contempt and directing that he be confined in the county jail until he answered the questions or until the grand jury was discharged.

REASONS FOR DENYING THE WRIT

I. THIS CASE IS MOOT SINCE THE PETITIONER WAS RELEASED FROM CIVIL CONFINEMENT ON OCTOBER 24, 1972.

When the grand jury was discharged, on October 24, 1972, the petitioner was released from civil confinement. At that time the grand jury investigation and all collateral matters, including the matter involving the petitioner, came to a close. The Court has constitutional jurisdiction over actual cases and controversies, between adverse interests, with respect to which the Courts' judgment will be effective. If the controversy becomes academic by reasons of changing circumstances, the court's jurisdiction ceases. A controversy may end if the legal action which is the subject of the prohibition is withdrawn (**William v. Simons**, 35 U.S. 49 (1957). Therefore, this case is moot.

In addition it should be noted that the facts of this case make it a particularly inappropriate vehicle for raising the questions petitioner would have this Court consider. First of all, petitioner has never claimed and does not now claim that the source of his information was confidential. In fact, he revealed the source of his information (Pearl Beatty) in the very newspaper article which caused the grand jury to subpoena him. Second, petitioner has never claimed and does not now claim that the information given to him by this source was given confidentially. In fact he has stated to the contrary. So in attempting to assert what he would like to be an absolute privilege, petitioner cannot claim to be protecting either a

confidential source of information, or information given to him confidentially.

Moreover, since the conclusion of this case the New Jersey Legislature has passed a bill granting a much broader protection to newsmen than N.J.S. 2A:84A-21. This bill is presently awaiting the signature of the Governor. A controversy may end if the statute which is the basis of the action complained of is repealed or modified. **Bryan v. Austin**, 354 U.S. 933 (1957); **Berry v. Davis**, 242 U.S. 468 (1917).

II. CASE AUTHORITY CLEARLY DICTATES THAT PETITIONER SHOULD BE COMPELLED TO TESTIFY BEFORE THE GRAND JURY.

Petitioner contends that effective news reporting requires that newsmen be able to keep informant's statements confidential. Therefore, petitioner argues that the State of New Jersey must show a "minimum of compelling need, relevancy and materiality" before a reporter is required to testify about such statements. Petitioner employs the following reasoning in arriving at the conclusion that the above test should be applied: Petitioner points out that in the instant case the grand jury can submit a report or presentment rather than an indictment. A report is generally made by a grand jury when it cannot find enough evidence to support an indictment; but the surrounding circumstances warrant criticism. Reports are confined to commenting upon the action of public officials and public agencies. **In re Presentment by Camden County Grand Jury**, 34 N.J.378, 169 A. 2d 465 (1971). Petitioner argues that in cases such as the one at bar where public agencies are involved, it is impossible to know whether the grand jury will issue a report or an indictment. Therefore, defendant concludes that application of the above test is warranted.

It is the position of the State of New Jersey that relevant case authority dictates that no special test for determining when newsmen are required to testify be provided. Further, The State of New Jersey contends that the fact that the grand jury may submit a report rather than an indictment is not relevant in determining this question.

Clearly, this Court's decision in **Branzburg v. Hayes**, 408 U.S. 665 (1972), support the position of the State of New Jersey. Justice

White in the opinion of the Court turned aside suggestions that reporters are, unlike other citizens, somehow entitled to a preliminary inquiry into the scope of a grand jury inquiry and the validity of its subpoena, **Branzburg v. Hayes, supra,** 408 U.S. at pp. 701-707. Rather, the opinion of the Court in **Branzburg** clearly indicated that only when investigations are conducted in other than good faith can a newsman refuse to testify. **Branzburg v. Hayes, supra,** at 707.

The fact that a grand jury may submit a report rather than an indictment is of no consequence. The grand jury plays an important function in determining whether a crime has been committed. In conducting such investigations, the testimony of informed witnesses is crucial. "A grand jury investigation is not fully carried out until every available clue has been run down and all witnesses examined in every proper way to find if a crime has been committed."

Branzburg v. Hayes, supra, 408 U.S. at 702. **State v. Stone,** 429 F. 2d, 130, 140 (CA 2, 1970). Only after the grand jury has examined all available evidence can the grand jurors make a determination as to whether indictments will be returned. Under the current scheme articulated by this Court, a grand jury can hear the testimony of a news reporter and decide that an indictment is not appropriate. Certainly, the fact that the grand jury may decide to return a report rather than indictments should not be determinative of whether a reporter should be required to testify.

CONCLUSION

For the reasons stated herein, this Court is respectfully urged to deny the petition for a writ of certiorari.

Respectfully submitted,
JOSEPH P. LORDI
ESSEX COUNTY PROSECUTOR

BY:
R. BENJAMIN COHEN
ASSISTANT PROSECUTOR

DONALD KESSLER
LEGAL ASSISTANT

On the Brief

rbc/rd

DATED: February 15, 1973